

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 8, 2005

IN RE:)	
)	
APPLICATION OF VCUSTOMER CORPORATION)	DOCKET NO.
FOR A CERTIFICATE OF PUBLIC CONVENIENCE)	05-00171
AND NECESSITY TO PROVIDE COMPETING LOCAL)	
TELECOMMUNICATIONS SERVICES WITHIN THE)	
STATE OF TENNESSEE)	

INITIAL ORDER GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

This matter came before the Hearing Officer of the Tennessee Regulatory Authority (the "Authority" or "TRA") at a Hearing held on August 8, 2005, to consider the *Application for Certificate to Provide Competing Local Telecommunications Services* (the "*Application*") filed by vCustomer Corporation ("vCustomer") on June 24, 2005. In its *Application*, vCustomer seeks a certificate of public convenience and necessity ("CCN") for authority to provide competing local telecommunications services, including telecommunications relay services, within the State of Tennessee.

Legal Standard for Granting Certificate of Public Convenience and Necessity

vCustomer's *Application* was made pursuant to, and was considered in light of, the criteria for granting a CCN as set forth in Tenn. Code Ann. § 65-4-201 (2004), which provides, in pertinent part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the

authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . .

* * *

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders, and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

* * *

(d) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995¹

¹ Notwithstanding the existence of subsection (d), the Federal Communications Commission ("FCC") has expressly preempted the Authority's enforcement of subsection (d) pursuant to the authority granted to the FCC under 47 U.S.C. § 253(d). *In the Matter of AVR, L.P. d/b/a Hyperion of Tennessee, L.P. Petition for Preemption of Tennessee Code Annotated Section 65-4-201(d) (2004) and Tennessee Regulatory Authority Decision Denying Hyperion's Application Requesting Authority to Provide Service in Tennessee Rural LEC Service Area*, FCC 99-100, (Memorandum Opinion and Order) 14 FCC Rcd 11064 (May 27, 1999), (Memorandum Opinion and Order) 16 FCC Rcd 1247 (January 8, 2001). The Authority has since issued an order expanding a competing local exchange carrier's CCN to provide telecommunications services on a statewide basis including areas served by incumbent local exchange carriers with fewer than 100,000 total access lines in Tennessee. *See In re Application of Level 3 Communications, LLC to Expand its CCN to Provide Facilities-Based Local Exchange and Interexchange Telecommunications Services in all Tennessee Service Areas*, Docket No. 02-00230, *Order Approving Application of Level 3 Communications, L.L.C. to Amend Its Certificate of Public Convenience and Necessity* (June 28, 2002).

Furthermore, pursuant to Tenn. Code Ann. § 65-5-112 (2004), a competing telecommunications provider is required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.

The August 8, 2005 Hearing

Pursuant to Tenn. Code Ann. § 65-4-204 (2004), public notice of the Hearing in this matter was issued by the Hearing Officer on July 28, 2005. No persons sought intervention prior to or during the Hearing. At the Hearing held on August 8, 2005, Mr. Jose S. David, vCustomer's Chief Financial Officer, participated in the Hearing, and was subject to examination by the Hearing Officer. James L. Murphy, III, Esq., Boulton, Cummings, Conners & Berry, PLC, 1600 Division Street, Suite 700, Nashville, Tennessee 37203, appeared on behalf of vCustomer. Upon vCustomer's conclusion of the presentation of its proof, the Hearing Officer granted vCustomer's *Application* based upon the following findings of fact and conclusions of law:

I. vCustomer Corporation's Qualifications

1. vCustomer is a corporation originally organized under the laws of the State of Washington in 1999, and was qualified to transact business in the State of Tennessee on May 26, 2005.

2. The complete street address of vCustomer's registered agent is Corporation Service Company, 2908 Poston Avenue, Nashville, Tennessee 37203. The complete street address of vCustomer's corporate office is 520 Kirkland Way, Suite 101, Kirkland, Washington 98033. The telephone number is (206) 802-0200 and the facsimile number is (206) 802-0201.

3. The *Application* and supporting documentary information existing in the record indicate that vCustomer has the requisite technical and managerial ability to provide competitive access services and transport telecommunications services within the State of Tennessee. Specifically, vCustomer's senior management team possesses extensive business, technical, operational and regulatory telecommunications experience.

4. vCustomer has the necessary capital and financial ability to provide the services it proposes to offer.

5. vCustomer has represented that it will adhere to all applicable statutes, policies, rules and orders of the Authority.

II. Proposed Services

vCustomer intends to provide competing local telecommunications services, including telecommunications relay services, within the State of Tennessee. vCustomer plans to provide, for the communicatively disabled, access to the intrastate network that is functionally equivalent to that enjoyed by individuals who are not disabled. Individuals with communication disabilities subscribing to Tennessee intrastate service will be able to call or be called by any business or residence that has standard telephone service in Tennessee. In addition to telecommunications relay services, vCustomer intends to provide directory assistance and operator services to Tennessee customers.²

² vCustomer has filed a joint petition with MCI WorldCom Communications, Inc. ("MCI") for the Authority's approval of (1) the assignment of the contract to provide relay services and to operate the Tennessee Relay Center from MCI to vCustomer, and (2) the transfer of assets including the Tennessee Relay Center, directory assistance and operator services from MCI to vCustomer. *See In re Joint Petition of MCI WorldCom Communications, Inc. and vCustomer Corporation for Expedited Approval of the Assignment of the Contract to Provide Relay Services and to Operate the Tennessee Relay Center and the Transfer of the Tennessee Telereley Call Center, Directory Assistance, Operator Services and Other Related Assets to vCustomer Corporation*, Docket No. 05-00168.

III. Permitting Competition to Serve the Public Convenience and Necessity

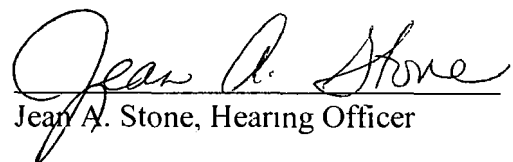
Upon a review of the *Application* and the record in this matter, the Hearing Officer finds that approval of vCustomer's *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and by fostering the development of an efficient, technologically advanced statewide system of telecommunications services.

IV. Small and Minority-Owned Telecommunications Business Participation Plan and Business Assistance Program

vCustomer has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-112 (2004) and the Authority's Rules.

IT IS THEREFORE ORDERED THAT:

1. The *Application for Certificate to Provide Competing Local Telecommunications Services* filed by vCustomer Corporation is approved; and
2. Any party aggrieved by the Hearing Officer's decision in this matter may file a petition for reconsideration within fifteen (15) days from and after the date of this Order.


Jean A. Stone, Hearing Officer